

THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

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UNITED STATES OF AMERICA	*	4:18-CR-188-SDJ-KPJ-1
	*	Sherman, Texas
vs.	*	
	*	10:02 a.m. - 10:31 a.m.
DANIEL MENDOZA	*	February 7, 2019

* * * * *

CHANGE OF PLEA HEARING

BEFORE THE HONORABLE JUDGE CHRISTINE A. NOWAK
UNITED STATES MAGISTRATE JUDGE

* * * * *

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1 P R O C E E D I N G S

2 10:02 A.M. - FEBRUARY 7, 2019

3 THE COURT: Good morning, everyone. Please be
4 seated. We are scheduled here today to take up Cause
5 No. 4:18-CR-188, The United States of America vs.
6 Daniel Mendoza.

7 If I can have an appearance on behalf of
8 the Government, please.

9 MR. GONZALEZ: Your Honor, Ernest Gonzalez for
10 the Government. The Government is ready to proceed.

11 THE COURT: If I can have an appearance on
12 behalf of Mr. Mendoza.

13 MR. JENKINS: Robert Jenkins for Mr. Mendoza,
14 Your Honor. We are ready to proceed.

15 THE COURT: Thank you.

16 Mr. Mendoza, sir, can you please state
17 your full name for my record?

18 DEFENDANT MENDOZA: Daniel Mendoza.

19 THE COURT: All right. Mr. Mendoza, I know
20 you and I previously have been together. Can you just
21 confirm for me you continue to speak and understand
22 English?

23 DEFENDANT MENDOZA: Yes, ma'am.

24 THE COURT: And you don't want an
25 interpreter --

1 DEFENDANT MENDOZA: No, ma'am.

2 THE COURT: -- is that right? Okay.

3 We are scheduled to proceed, Mr. Mendoza,
4 for a Change of Plea Hearing. I've been advised that
5 you want to enter a plea to both Counts One and Three
6 of this First Superseding Indictment that's pending
7 against you; is that correct?

8 DEFENDANT MENDOZA: Yes, ma'am.

9 THE COURT: All right. So, for us to talk
10 about that, I do need to have you sworn, so if I can
11 ask you to raise your right hand to the best of your
12 ability.

13 DEPUTY CLERK: You do solemnly swear the
14 testimony you shall give in the case now in hearing
15 shall be the truth, the whole truth, and nothing but
16 the truth, so help you God?

17 DEFENDANT MENDOZA: Yes, ma'am.

18 THE COURT: Now, before we go forward,
19 Mr. Mendoza, I'm going to ask you just to confirm a few
20 things for me. Do you have a copy of the First
21 Superseding Indictment?

22 DEFENDANT MENDOZA: Yes, ma'am.

23 THE COURT: Okay. Now, I do just want to
24 confirm on the record, the Court's understanding is
25 that it's been determined that the redacted copy that

1 is contained on the docket omits page 2. And so before
2 we go any further, I do want just the Government and
3 defense counsel to confirm for me that they do have a
4 full copy of the Indictment, the First Superseding
5 Indictment, at this time.

6 Is that correct, Mr. Gonzalez?

7 MR. GONZALEZ: Yes, Your Honor.

8 THE COURT: And Mr. Jenkins?

9 MR. JENKINS: Yes. And we have redacted our
10 copy.

11 THE COURT: What I'm really just trying to
12 make sure of is that you had a full and fair
13 opportunity to talk with your client about this page 2
14 that's not found on the docket currently?

15 MR. JENKINS: Yes, Your Honor.

16 THE COURT: Okay. And so you're not --

17 MR. JENKINS: And we have a copy here in front
18 of us.

19 THE COURT: So y'all don't think you need
20 additional time to talk about the Indictment since
21 we've determined that that was omitted?

22 MR. JENKINS: No, Your Honor.

23 THE COURT: Okay. And so, Mr. Mendoza, I'm
24 looking at this First Superseding Indictment and I just
25 want to confirm, Count One is for a violation of 21

1 U.S.C., Section 846, Conspiracy to Possess with the
2 Intent to Manufacture and Distribute Methamphetamine.
3 And if I turn, Count Three is a violation of 18 U.S.C.,
4 Section 924(c), Possession of a Firearm in Furtherance
5 of a Drug Trafficking Crime.

6 Are those the two counts that you're
7 telling me you want to enter a plea to here today?

8 DEFENDANT MENDOZA: Yes, ma'am.

9 THE COURT: All right. Before we're able to
10 go any further, Mr. Mendoza, you and I have to talk
11 about this document. And can you just confirm for me,
12 do you read and write in English?

13 DEFENDANT MENDOZA: Yes, ma'am.

14 THE COURT: So then, Mr. Mendoza, if I can ask
15 if you will turn with me to the next to last page of
16 this consent. Is this your signature here?

17 DEFENDANT MENDOZA: Yes, ma'am.

18 THE COURT: Okay. Did you read this document
19 and talk with Mr. Jenkins about it before you signed it?

20 DEFENDANT MENDOZA: Yes, ma'am.

21 THE COURT: And do you feel that you understand
22 this document?

23 DEFENDANT MENDOZA: Yes, ma'am.

24 THE COURT: And so I'm going to ask you some
25 questions just to make sure you do. Do you understand

1 that signing this document, what you're doing is you're
2 giving up your right to appear before the District
3 Judge to enter your plea?

4 DEFENDANT MENDOZA: Yes, ma'am.

5 THE COURT: And you're agreeing to enter your
6 plea before me, a Magistrate Judge?

7 DEFENDANT MENDOZA: Yes, ma'am.

8 THE COURT: Is that what you want to do?

9 DEFENDANT MENDOZA: Yes, ma'am.

10 THE COURT: Did anybody make you sign this?

11 DEFENDANT MENDOZA: No, ma'am.

12 THE COURT: So this is your own free choice?

13 DEFENDANT MENDOZA: Yes, ma'am.

14 THE COURT: All right. Then I'm going to go
15 ahead and find that your consent was knowingly and
16 voluntarily given and that we should proceed with
17 taking your plea here today.

18 Now, Mr. Mendoza, before we leave this
19 consent document, I want to talk with you about some of
20 its contents; all right?

21 DEFENDANT MENDOZA: Yes, ma'am.

22 THE COURT: Part of my job here today is to
23 make sure you really do understand what you're doing,
24 and so that's what we're going to talk about.

25 Do you understand this is not your only

1 option? You don't have to enter a guilty plea to these
2 charges. You've got a right under the Constitution of
3 the United States to enter a plea of not guilty to both
4 Counts One and Three and to go to trial. Do you fully
5 understand that?

6 DEFENDANT MENDOZA: Yes, ma'am.

7 THE COURT: Now, if you were to plead not
8 guilty, the Constitution of the United States affords
9 you certain rights and those are sometimes called your
10 trial rights. I'm going to read just a laundry list of
11 those to you at this time to make sure you do fully
12 understand what you're giving up by going forward in
13 this manner.

14 Mr. Mendoza, if you were to plead not
15 guilty, the Constitution of the United States would
16 guarantee you the following:

17 The right to a speedy and public trial by
18 a jury in this district; the right at such trial for
19 you to see, hear, and cross-examine all witnesses
20 against you and to present evidence; the right to use
21 the power and process of the Court to compel the
22 production of any evidence and the attendance of
23 witnesses in your favor; the right to have the
24 assistance of an attorney in your defense at all stages
25 of the proceeding. At the trial, you could not be

1 compelled to testify. Whether you would testify would
2 be your own decision. The United States would be
3 required to prove your guilt beyond a reasonable doubt
4 at trial. And if you were found guilty, you would have
5 the right to appeal.

6 So do you understand you have and you are
7 guaranteed each of those rights that I just read to you
8 under the Constitution of the United States?

9 DEFENDANT MENDOZA: Yes, ma'am.

10 THE COURT: Mr. Mendoza, do you further
11 understand that if you persist in entering a guilty
12 plea here today and the District Court accepts this
13 plea, there's going to be no trial?

14 DEFENDANT MENDOZA: Yes, ma'am.

15 THE COURT: Do you understand, if you enter
16 this guilty plea here today and the District Court
17 accepts it, you're going to give up all of those rights
18 that I just read to you, except for the continued
19 assistance of your counsel, Mr. Jenkins?

20 DEFENDANT MENDOZA: Yes, ma'am.

21 THE COURT: And lastly, do you understand that
22 if you enter this plea here today, you're going to be
23 convicted for these two counts?

24 DEFENDANT MENDOZA: Yes, ma'am.

25 THE COURT: So, seeing that you do understand

1 those consequences, I also have to make sure you're
2 competent to enter a plea, and so I'm just going to ask
3 you some background questions. Bear with me, okay?

4 DEFENDANT MENDOZA: Yes, ma'am.

5 THE COURT: Have you ever been diagnosed or
6 treated for any type of narcotics addiction or
7 alcoholism? Have you ever had a problem with drugs and
8 alcohol?

9 DEFENDANT MENDOZA: Yes, ma'am.

10 THE COURT: How recently?

11 DEFENDANT MENDOZA: Before I got arrested.

12 THE COURT: So fairly recently.

13 DEFENDANT MENDOZA: Yes, ma'am.

14 THE COURT: So let me ask you, do you think
15 that your past history of drug use or alcohol use is in
16 any way going to affect your ability to understand
17 what's going on here in this courtroom today?

18 DEFENDANT MENDOZA: No, ma'am.

19 THE COURT: Are you currently under the
20 influence of any drugs, alcohol, any substance
21 whatsoever, other than a medication prescribed by your
22 doctor?

23 DEFENDANT MENDOZA: No, ma'am.

24 THE COURT: Have you ever been diagnosed or
25 treated for any type of mental illness, emotional

1 disability, or problem? That's going to include things
2 like depression, anxiety.

3 DEFENDANT MENDOZA: No, ma'am.

4 THE COURT: Have you understood everything
5 we've talked about so far?

6 DEFENDANT MENDOZA: Yes, ma'am.

7 THE COURT: And you're telling me you feel a
8 hundred percent physically and mentally fit for us to
9 take your plea here today?

10 DEFENDANT MENDOZA: Yes, ma'am.

11 THE COURT: And counsel, I'm just going to ask
12 you as well, because you've had a further opportunity
13 to speak with your client, are you aware of any reason
14 whatsoever he's not able to enter a knowing and
15 intelligent plea?

16 MR. JENKINS: No, Your Honor.

17 THE COURT: So do you believe him to be fully
18 competent to enter a plea here today to both Counts One
19 and Three of this First Superseding Indictment?

20 MR. JENKINS: He is, Your Honor.

21 THE COURT: Now, Mr. Mendoza, I want us to
22 talk about this Indictment just a little bit further.
23 And like I said, I've got this copy here and I asked
24 you at the outset if you had this copy and read it and
25 talked with your lawyer. Does all of that remain true?

1 DEFENDANT MENDOZA: Yes, ma'am.

2 THE COURT: So I'm going to also ask you at
3 this time, Mr. Mendoza, have you had a full and fair
4 opportunity to talk with Mr. Jenkins about all the
5 facts of your case and any defenses you might have to
6 these two charges?

7 DEFENDANT MENDOZA: Yes, ma'am.

8 THE COURT: And following all of your
9 communications with your counsel, are you fully
10 satisfied with the representation and the advice that
11 you've received in connection with your case, as well
12 as in connection with your decision to enter a plea
13 here today?

14 DEFENDANT MENDOZA: Yes, ma'am.

15 THE COURT: All right. And I'm going to tell
16 you, in light of that, you and I can talk about this
17 Indictment in one of two ways: I can have the whole
18 thing read to you at this time if you would like.
19 Alternatively, you can give up the reading, and if you
20 do that, I'll have the Government just summarize these
21 counts that you're trying to enter a plea to. It's
22 your choice, though, so you tell me what do you want to
23 do?

24 DEFENDANT MENDOZA: Summarize.

25 THE COURT: All right. Mr. Jenkins, I'm just

1 going to confirm, that means y'all are waiving; is that
2 right?

3 MR. JENKINS: Yes, Your Honor.

4 THE COURT: All right. So, Mr. Gonzalez, if I
5 might ask at this time, if you'll please summarize each
6 of Counts One and Three for Mr. Mendoza.

7 And I am going to also ask, Mr. Mendoza,
8 for the Government to advise you of what are called the
9 essential elements of this offense. The essential
10 elements are what the Government would have to prove at
11 trial in order for you to actually be convicted of
12 these counts. So just listen very carefully, okay?

13 DEFENDANT MENDOZA: Yes, ma'am.

14 MR. GONZALEZ: And, Your Honor, before I do
15 that, I'd like to point out that there are two errors
16 that I just noticed. In Document 82, which is the
17 elements that were filed, in regards to the second
18 count, the caption above it reads Count Two, when it
19 should be Count Three. And then in the Plea Agreement
20 also, the same error in the second page, it says "As to
21 Count Two" when it should say "As to Count Three."

22 THE COURT: All right. So I tell you what,
23 here's what we're going to do before we go forward.
24 Let me hand down the Plea Agreement since we have the
25 originals here. And if we can make that change and

1 everyone -- Mr. Gonzalez, Mr. Jenkins, and
2 Mr. Mendoza -- if you'll all initial it.

3 And then as to the elements, if you'll
4 read them correctly into the record, Mr. Gonzalez. And
5 then subsequent to today's proceeding, if you'll file
6 amended elements.

7 And Mr. Jenkins, I'm just going to
8 confirm, do you find that an acceptable way to treat
9 that typographical error?

10 MR. JENKINS: Yes, Your Honor.

11 THE COURT: All right. So let me hand down
12 the Plea Agreement at this time.

13 MR. GONZALEZ: May I approach?

14 THE COURT: Yes, thank you so much.

15 ***[Pause while document is corrected]***

16 Thank you, Mr. Gonzalez.

17 All right. And so at this time let's go
18 ahead and again summarize Counts One and Three for
19 Mr. Mendoza, and also advise him of the essential
20 elements as correctly stated.

21 MR. GONZALEZ: Yes, Your Honor. Count One
22 alleges a violation of Title 21, United States Code,
23 Section 846, Conspiracy to Possess with the Intent to
24 Distribute Methamphetamine. And Count Three of the
25 First Superseding Indictment charges a violation of

1 Title 18, United States Code, Section 924(c),
2 Possession of a Firearm in Furtherance of a Drug
3 Trafficking Crime.

4 The essential elements for those
5 particular offenses are as follows for Count One:

6 Element No. 1. That the defendant and one
7 or more persons in some way or manner made an agreement
8 to commit the crime charged in the First Superseding
9 Indictment, that is, to possess with the intent to
10 distribute 500 grams or more of a mixture or substance
11 containing a detectable amount of methamphetamine or 50
12 grams or more of methamphetamine actual;

13 2. That the defendant knew the unlawful
14 purpose of the agreement;

15 3. That the defendant joined in the
16 agreement willfully, that is, with the intent to
17 further its unlawful purpose;

18 4. That the overall scope of the
19 conspiracy involved 500 grams or more of a mixture or
20 substance containing a detectable amount of
21 methamphetamine, or 50 grams or more of methamphetamine
22 actual;

23 And lastly, element 5 for that count.

24 That the defendant knew or should have known that the
25 scope of the conspiracy involved 500 grams or more of a

1 mixture or substance containing a detectable amount of
2 methamphetamine, or 50 grams or more of methamphetamine
3 actual.

4 As to Count Three, the elements are as
5 follows:

6 Number 1. That the defendant knowingly
7 possessed the controlled substance charged in the First
8 Superseding Indictment;

9 2. That the substance was in fact a
10 mixture or substance containing a detectable amount of
11 methamphetamine;

12 3. That the defendant possessed the
13 substance charged in the First Superseding Indictment
14 with intent to distribute it;

15 And lastly. That the defendant knowingly
16 possessed a firearm, namely a Ruger semi-automatic 9mm
17 handgun, Serial No. 312-91160, and a Springfield
18 semi-automatic .40 caliber handgun, Serial No.
19 MG174539, in furtherance of the drug trafficking crime
20 set forth in the elements 1 through 3.

21 THE COURT: Thank you.

22 Okay. So, Mr. Mendoza, I'm going to ask
23 you some questions about that information.

24 First off, we're going to start with
25 Counts One and Three. Do you understand the charges

1 pending against you in Counts One and Three of the
2 First Superseding Indictment?

3 DEFENDANT MENDOZA: Yes, ma'am.

4 THE COURT: Did you also understand each of
5 the essential elements related to both of those counts
6 that were just read to you?

7 DEFENDANT MENDOZA: Yes, ma'am.

8 THE COURT: Do you understand that when you
9 enter a plea here today, what you're going to be doing
10 is admitting to all of those essential elements that
11 were just read to you?

12 DEFENDANT MENDOZA: Yes, ma'am.

13 THE COURT: And so I'm going to go ahead and
14 just ask you, do you in fact admit to each of the
15 elements for both Counts One and Three?

16 DEFENDANT MENDOZA: Yes, ma'am.

17 THE COURT: Now, it's also very important for
18 you to understand the full range of penalties and
19 consequences that you could be subjected to following
20 entry of your plea here today, so I am also going to
21 ask the Government to inform you of that.

22 DEFENDANT MENDOZA: Yes, ma'am.

23 MR. GONZALEZ: Your Honor, as to Count One,
24 the potential punishment is as follows:

25 If 500 grams or more of a mixture or

1 substance containing a detectable amount of
2 methamphetamine, or 50 grams or more of methamphetamine
3 actual, not less than 10 years and not more than life
4 imprisonment; a fine not to exceed \$10 million, or
5 both; and a term of supervised release of at least five
6 years. There is a mandatory Special Assessment of \$100
7 which must be paid by cashier's check or money order to
8 United States District Clerk before sentencing; there's
9 a possibility of forfeiture of property involved or
10 traceable to the criminal offense, restitution to the
11 victims or the community, and costs of incarceration
12 and supervision.

13 As to Count Three, the possible punishment
14 is imprisonment for not less than five years, to be
15 served consecutively to any other term of imprisonment;
16 a fine not to exceed \$250,000, or both, and a term of
17 supervised release of not more than three years. There
18 is also a mandatory Special Assessment of \$100, which
19 must be paid by cashier's check or money order to the
20 United States District Clerk before sentencing.
21 There's also the potential for forfeiture of property
22 involved or traceable to the criminal offense,
23 restitution to the victims or the community, and the
24 costs of incarceration and supervision.

25 THE COURT: Thank you.

1 Okay. So I'm going to ask you some
2 questions about that. Do you understand, if you enter
3 a guilty plea here today, that's the range of penalties
4 and consequences you will be subjected to, that you
5 could receive?

6 DEFENDANT MENDOZA: Yes, ma'am.

7 THE COURT: Now, it's also very important for
8 you to understand how sentencing works because it's
9 different than in the state courts. So do you
10 understand that whether you enter this plea here today
11 or you went forward to trial and you were convicted by
12 a jury, in either of those circumstances it's the
13 Federal District Judge that will do your sentencing.
14 Do you understand that?

15 DEFENDANT MENDOZA: Yes, ma'am.

16 THE COURT: Do you understand that in
17 determining or deciding what your sentence should be,
18 the Federal District Judge is going to look to, but she
19 is not obligated to follow the Federal Sentencing
20 Guidelines?

21 DEFENDANT MENDOZA: Yes, ma'am.

22 THE COURT: And so you and your counsel, have
23 y'all sat down and have you talked about how those
24 Sentencing Guidelines might be used or applied in your
25 particular case?

1 DEFENDANT MENDOZA: Yes, ma'am.

2 THE COURT: And following your communications
3 with your counsel, do you fully understand the
4 Guidelines, they're not mandatory, they're just
5 discretionary?

6 DEFENDANT MENDOZA: Yes, ma'am.

7 THE COURT: That what that means is the
8 District Judge is not obligated to follow them?

9 DEFENDANT MENDOZA: Yes, ma'am.

10 THE COURT: And that she could sentence you
11 all the way up to that statutory maximum?

12 DEFENDANT MENDOZA: Yes, ma'am.

13 THE COURT: Do you also understand that the
14 Guideline range for your particular case is not able to
15 be determined until after completion of your Written
16 Presentence Report?

17 DEFENDANT MENDOZA: Yes, ma'am.

18 THE COURT: And so what that means is that any
19 estimate that Mr. Jenkins is giving you, the Government
20 has given you, all that is, is an estimate?

21 DEFENDANT MENDOZA: Yes, ma'am.

22 THE COURT: Then with that, let's go ahead and
23 turn and look at this Plea Agreement.

24 And counsel, I do apologize, I've realized
25 upon looking at each of the documents that we signed

1 today that Mr. Mendoza's signature is undated.

2 So I am going to hand these back down and
3 ask, Mr. Mendoza, if you can date your signature.

4 **[Pause]**

5 MR. JENKINS: May I approach, Your Honor?

6 THE COURT: Yes. Thank you so much,
7 Mr. Jenkins. I appreciate it.

8 So, having received those originals back
9 again, at this time, Mr. Mendoza, I want to talk with
10 you about your Plea Agreement and the Addendum to your
11 Plea Agreement. So I've got the original and if I turn
12 to this next to last page, being page 9, Mr. Mendoza,
13 is that your signature there?

14 DEFENDANT MENDOZA: Yes, ma'am.

15 THE COURT: And did you read the entirety of
16 this Plea Agreement before you signed it?

17 DEFENDANT MENDOZA: Yes, ma'am.

18 THE COURT: And did you talk with Mr. Jenkins
19 about each and every one of the paragraphs in this
20 document before you signed it?

21 DEFENDANT MENDOZA: Yes, ma'am.

22 THE COURT: So were you comfortable you
23 understood everything in your Plea Agreement before you
24 signed it?

25 DEFENDANT MENDOZA: Yes, ma'am.

1 THE COURT: And I'm going to ask you about
2 your Addendum as well because I've got that document
3 here. And the same questions, if I turn to page 2, is
4 that your signature?

5 DEFENDANT MENDOZA: Yes, ma'am.

6 THE COURT: Did you talk with your lawyer
7 about this document before you signed it?

8 DEFENDANT MENDOZA: Yes.

9 THE COURT: And were you comfortable you
10 understood everything in it before you signed it?

11 DEFENDANT MENDOZA: Yes, ma'am.

12 THE COURT: Now, if I were to take these two
13 documents together, your Plea Agreement and the
14 Addendum thereto, do these two documents make up the
15 entirety of your agreement with the Government?

16 DEFENDANT MENDOZA: Yes, ma'am.

17 THE COURT: Then I am going to go ahead and
18 ask the Government at this time to summarize your Plea
19 Agreement, including specifically the change made in
20 paragraph 3, paragraph 5, paragraph 8, 11 and 15.

21 MR. GONZALEZ: Your Honor, in paragraph 3,
22 what was changed is it once said "As to Count Two," and
23 then it described the potential punishment. It was
24 changed to read as "As to Count Three," which is the
25 count the defendant is pleading guilty to.

1 5 is entitled "Guideline Stipulations"
2 and it states, "The parties stipulate to the following
3 factors that affect the appropriate sentencing range in
4 this case:"

5 Subparagraph (a) states that, "As to
6 Count One, the amount involved during the term of the
7 conspiracy involved 45 kilograms or more of a mixture
8 or substance containing a detectable amount of
9 methamphetamine, or 4.5 kilograms or more of
10 methamphetamine actual. This amount was involved in
11 the conspiracy after the defendant entered the
12 conspiracy, was reasonably foreseeable to the
13 defendant, and was part of jointly undertaken activity
14 resulting in a base offense level pursuant to United
15 States Sentencing Guideline Section 2D1.1 of 38."

16 Subparagraph (b). "As to Count Two,
17 imprisonment for not less than five years to be served
18 consecutively to any other term of imprisonment.

19 Subparagraph (c). "For each count, a
20 reduction of three levels for acceptance of
21 responsibility under United States Sentencing
22 Guideline, Section 3E1.1 applies. However, this
23 stipulation is subject to the recommendation of the
24 United States Probation Office.

25 And subparagraph (d) states that, "For

1 each count, the defendant does not qualify for a
2 reduction under United States Sentencing Guideline
3 Section 3B1.2, Mitigating Role, and a decrease of two
4 levels."

5 It also states that, "The parties
6 understand that the Court is not bound by these
7 stipulations. Furthermore, the parties specifically
8 agree that other specific offense characteristics or
9 guideline adjustments may increase or decrease the
10 appropriate sentencing range. Nothing in this
11 agreement will preclude argument by either party
12 regarding any other specific offense characteristic or
13 guideline adjustment."

14 Paragraph 8 is entitled "Forfeiture" and
15 it states that, "The defendant agrees to forfeit to the
16 United States voluntarily and immediately all of his
17 right, title, and interest to the following property,
18 which is subject to forfeiture pursuant to 18 U.S.C.
19 Section 924(d) and 21 U.S.C. Section 853."

20 And in subparagraph (a) it states:

21 "2015 Chevrolet Tahoe SUV, with a VIN
22 number of 1GNSCBKC4FR220658, seized from the defendant,
23 Daniel Mendoza."

24 In subparagraph (b) it states:

25 "Springfield semi-automatic .40 caliber

1 handgun, Serial Number MG174539, seized from the
2 defendant, Daniel Mendoza."

3 And paragraph 11 is entitled "Waiver of
4 Right to Appeal or Otherwise Challenge Sentence," and
5 it states the following:

6 "Except as otherwise provided in this
7 paragraph, the defendant waives the right to appeal the
8 conviction, sentence, fine, order of restitution, or
9 order of forfeiture in this case on all grounds. The
10 defendant further agrees not to contest the conviction,
11 sentence, fine, order of restitution, or order of
12 forfeiture in any post-conviction proceeding,
13 including, but not limited to, a proceeding under 28
14 U.S.C., Section 2255. The defendant, however, reserves
15 the right to appeal any punishment imposed in excess of
16 the statutory maximum. The defendant also reserves the
17 right to appeal or seek collateral review of a claim of
18 ineffective assistance of counsel."

19 In paragraph 15, it's entitled "Entirety
20 of Agreement," and it states:

21 "This Plea Agreement consists of this
22 document in the sealed addendum required by Local Rule
23 CR-49. References in this document to 'agreement' or
24 'Plea Agreement' refer to both this document and the
25 Sealed Addendum. The defendant, the defendant's

1 attorney, and the Government acknowledge that this
2 agreement is a complete statement of the parties'
3 agreement in this case. It supersedes all other plea
4 agreements and may not be modified unless the
5 modification is in writing and signed by all parties.
6 No other promises have been made or implied."

7 And it's signed by myself, by Mr. Daniel
8 Mendoza, and his attorney, Robert Jenkins.

9 THE COURT: All right. So, Mr. Mendoza, I
10 want to talk with you a little further about each of
11 those paragraphs. I just need to confirm that you
12 really do understand this agreement.

13 So we're going to begin with that
14 paragraph 3 that's entitled Sentence. And we've
15 already advised you here today of the maximum penalties
16 the Court can impose, but I do want to go over this
17 paragraph because here's where we have the
18 typographical error.

19 So, on page 2 of your Plea Agreement, it
20 previously said "As to Count Two." We've stricken the
21 word "Two" and replaced it with "Three."

22 Are these your initials next to that
23 change?

24 DEFENDANT MENDOZA: Yes, ma'am.

25 THE COURT: And do you entirely understand the

1 change that's been made?

2 DEFENDANT MENDOZA: Yes, ma'am.

3 THE COURT: Do you have any further questions
4 about that change?

5 DEFENDANT MENDOZA: No, ma'am.

6 THE COURT: Okay. So then let's keep going
7 and let's look at paragraph 5. Paragraph 5 is entitled
8 "Guideline Stipulations." And I just need to confirm
9 that you understand that by and through this paragraph
10 there's an agreement by the Government to recommend or
11 to not oppose a request that a particular provision of
12 the Guidelines or a particular sentencing factor
13 applies or does not apply in your case.

14 Do you understand that's what's discussed
15 in paragraph 5?

16 DEFENDANT MENDOZA: Yes, ma'am.

17 THE COURT: Now, do you fully understand that
18 the District Judge is not bound by the sentencing
19 recommendation that is contained within your Plea
20 Agreement?

21 DEFENDANT MENDOZA: Yes, ma'am.

22 THE COURT: And so by that same token, do you
23 understand that if the District Judge declines to
24 accept this recommendation, you're still going to
25 remain bound by the plea you enter here today and you

1 will have no right to withdraw it?

2 DEFENDANT MENDOZA: Yes.

3 THE COURT: Now, that's one of the most
4 important things you and I are going to talk about
5 today, so I'm going to ask that question even a little
6 differently. Do you understand if the sentence you
7 ultimately receive is more severe than what you're
8 expecting or what you're hoping to get, you will still
9 remain bound by this plea here today?

10 DEFENDANT MENDOZA: Yes, ma'am.

11 THE COURT: Then let's look next at that
12 paragraph 8, which is entitled "Forfeiture." And all I
13 need to confirm is there's specific property listed here
14 in paragraph 8 and subparagraph (a) and subparagraph
15 (b), this Tahoe and then the semi-automatic. Do you
16 understand that by and through paragraph 8, what you're
17 agreeing to do is to give up all right, title and
18 interest to that property and not to contest its
19 forfeiture?

20 DEFENDANT MENDOZA: Yes, ma'am.

21 THE COURT: Did you voluntarily and of your
22 own free will agree to give up all right, title, and
23 interest to this property and to not contest its
24 forfeiture?

25 DEFENDANT MENDOZA: Yes, ma'am.

1 THE COURT: So turn with me next to paragraph
2 11. That's your Appellate Rights. They are very
3 important. What you've agreed to do in paragraph 11 is
4 not to contest your conviction and sentence except on
5 two very limited grounds. And you also agree not to
6 contest those things in any post-conviction proceeding,
7 including, but not limited to, a Section 2255. Do you
8 understand that's what you're doing in paragraph 11?

9 DEFENDANT MENDOZA: Yes, ma'am.

10 THE COURT: So, even more specifically, you've
11 only reserved to yourself the right to appeal where
12 punishment is imposed in excess of the statutory
13 maximum or where you have a claim for ineffective
14 assistance of counsel. Do you understand that?

15 DEFENDANT MENDOZA: Yes.

16 THE COURT: And did you voluntarily and of
17 your own free will agree to give up your appellate
18 rights except in these two limited circumstances?

19 DEFENDANT MENDOZA: Yes, ma'am.

20 THE COURT: And if we look at that final
21 paragraph, paragraph 15, all I'm trying to confirm
22 again is that other than your Plea Agreement and your
23 Addendum, has anybody made any other promises or
24 assurances to you to get you to enter a plea here today?

25 DEFENDANT MENDOZA: No, ma'am.

1 THE COURT: Now, you and I aren't going to
2 walk through each of those remaining paragraphs
3 individually, but I am going to ask you, as to all of
4 them, do you have any questions whatsoever about your
5 Plea Agreement?

6 DEFENDANT MENDOZA: No, ma'am.

7 THE COURT: So, as you stand here today, are
8 you telling me you understand this agreement?

9 DEFENDANT MENDOZA: Yes, ma'am.

10 THE COURT: And you voluntarily and of your
11 own free will agree to each of these provisions?

12 DEFENDANT MENDOZA: Yes, ma'am.

13 THE COURT: And this is the agreement you want
14 the Court to accept and approve?

15 DEFENDANT MENDOZA: Yes, ma'am.

16 THE COURT: Now, before we leave the Plea
17 Agreement, Mr. Mendoza, I am just going to ask, are you
18 a United States Citizen, sir?

19 DEFENDANT MENDOZA: Yes, ma'am.

20 THE COURT: And have you ever previously been
21 convicted of a felony offense?

22 DEFENDANT MENDOZA: No, ma'am.

23 THE COURT: So I just want to make sure that
24 you and Mr. Jenkins have discussed the impact that
25 entering a plea to a felony offense could have on your

1 citizenship right. So have you and Mr. Jenkins
2 discussed that you may lose the right to vote, to hold
3 public office, to possess a firearm, to sit on a jury?

4 DEFENDANT MENDOZA: Yes, ma'am.

5 THE COURT: And so being apprised of those
6 consequences, do you still want to enter a plea here
7 today?

8 DEFENDANT MENDOZA: Yes, ma'am.

9 THE COURT: Then there's two other things that
10 you and I do have to talk about here today, and the
11 first is whether or not your plea is knowingly and
12 voluntarily given, and the second is whether or not
13 there's a Factual Basis.

14 So I can only take your plea if you're
15 actually guilty of this charge, and so I need for you
16 to confirm for me at this time, has anybody attempted
17 to force you, threaten you, make you, coerce you into
18 entering a plea here today?

19 DEFENDANT MENDOZA: No, ma'am.

20 THE COURT: Are you entering a plea to try and
21 help somebody else?

22 DEFENDANT MENDOZA: No, ma'am.

23 THE COURT: Are you here today of your own
24 free will?

25 DEFENDANT MENDOZA: Yes, ma'am.

1 THE COURT: Because you're actually guilty of
2 these counts?

3 DEFENDANT MENDOZA: Yes, ma'am.

4 THE COURT: Then, if you can, I'd like for us
5 to look at one final document together and that's going
6 to be your Factual Basis. And I have that Factual
7 Basis in my hands. And if I turn to page 2,
8 Mr. Mendoza, is that your signature there?

9 DEFENDANT MENDOZA: Yes, ma'am.

10 THE COURT: And did you read this document in
11 its entirety before you signed it?

12 DEFENDANT MENDOZA: Yes, ma'am.

13 THE COURT: And did you talk with your lawyer
14 about each and every one of these paragraphs before you
15 signed it?

16 DEFENDANT MENDOZA: Yes, ma'am.

17 THE COURT: And were you comfortable you
18 understood everything in this Factual Basis before you
19 signed it?

20 DEFENDANT MENDOZA: Yes.

21 THE COURT: Then I will go ahead and ask if
22 the Government will please read it into the record.

23 MR. GONZALEZ: Yes, Your Honor. The Factual
24 Basis is as follows. It states:

25 "The defendant, Daniel Mendoza, hereby

1 stipulates and agrees that at all times relevant to the
2 First Superseding Indictment herein, the following
3 facts are true:

4 "1. That the defendant, Daniel Mendoza,
5 who is changing his plea to guilty, is the same person
6 charged in the First Superseding Indictment;

7 "2. That the events described in the
8 First Superseding Indictment occurred in the Eastern
9 District of Texas and elsewhere;

10 "3. That Daniel Mendoza and one or more
11 persons in some way or manner made an agreement to
12 commit the crime charged in Count One of the First
13 Superseding Indictment, to knowingly and intentionally
14 possess with the intent to manufacture and distribute
15 45 kilograms or more of a mixture or substance
16 containing a detectable amount of methamphetamine, or
17 4.5 kilograms or more of methamphetamine actual;

18 "4. That Daniel Mendoza knew the unlawful
19 purpose of the agreement and joined in it with the
20 intent to further it;

21 "5. That Daniel Mendoza knew that the
22 amount involved during the term of the conspiracy
23 involved 45 kilograms or more of a mixture or substance
24 containing a detectable amount of methamphetamine, or
25 4.5 kilograms or more of methamphetamine actual. This

1 amount was involved in the conspiracy after the
2 defendant entered the conspiracy and was reasonably
3 foreseeable to the defendant and was part of jointly
4 undertaken activity;

5 "6. That Daniel Mendoza's role in the
6 conspiracy was to supply co-conspirators with kilogram
7 quantities of methamphetamine from various sources,
8 which was imported from Mexico, which would then be
9 distributed to other co-conspirators and co-defendants
10 during the term of the conspiracy in the Eastern and
11 Northern Districts of Texas;

12 "7. That Daniel Mendoza was in possession
13 of a Ruger semi-automatic .9mm handgun, Serial Number
14 312-91160, and a Springfield semi-automatic .40 caliber
15 handgun, Serial Number MG174539, on October 9, 2018, in
16 furtherance of the conspiracy as alleged in Count Three
17 of the First Superseding Indictment."

18 And it's signed by the defendant, Daniel
19 Mendoza, and his attorney, Robert Jenkins.

20 THE COURT: Thank you, Mr. Gonzalez.

21 So, Mr. Mendoza, let me ask you some
22 questions about this Factual Basis. First off, is
23 everything in this Factual Basis true and correct, sir?

24 DEFENDANT MENDOZA: Yes, ma'am.

25 THE COURT: Are there any changes or

1 corrections you would ask be made?

2 DEFENDANT MENDOZA: No, ma'am.

3 THE COURT: Do you understand that by
4 admitting that you engaged in this conduct, what you're
5 doing is admitting to both Counts One and Three?

6 DEFENDANT MENDOZA: Yes, ma'am.

7 THE COURT: Notwithstanding that I have this
8 Factual Basis, I am still going to ask for you to tell
9 me in your own words, what did you do in this case?

10 DEFENDANT MENDOZA: I was dealing drugs and
11 possession of a firearm.

12 THE COURT: And can you just specify for me
13 what type of drugs were you dealing?

14 DEFENDANT MENDOZA: Methamphetamine and heroin.

15 THE COURT: All right. And so I'm going to go
16 ahead and ask Government and defense counsel at this
17 time, having had the Factual Basis read into the record
18 and supplemented with Mr. Mendoza's statements here in
19 open court, are you each satisfied there is a Factual
20 Basis for this plea?

21 MR. GONZALEZ: Yes, Your Honor.

22 MR. JENKINS: Yes, Your Honor.

23 THE COURT: All right. Are you each also
24 satisfied the Court has complied with the requirements
25 of Rule 11 here today?

1 MR. GONZALEZ: Yes, Your Honor.

2 MR. JENKINS: Yes, Your Honor.

3 THE COURT: Mr. Mendoza, have you understood
4 everything that's gone on here today?

5 DEFENDANT MENDOZA: Yes, ma'am.

6 THE COURT: Do you have any questions
7 whatsoever?

8 DEFENDANT MENDOZA: No, ma'am.

9 THE COURT: Do you want a further opportunity
10 to talk with your lawyer before we keep going forward?

11 DEFENDANT MENDOZA: No, ma'am.

12 THE COURT: And Mr. Jenkins, I'm just going to
13 ask you for you to confirm before we go on that you
14 have in fact gone over each and every paragraph
15 contained in the Plea Agreement, Addendum, and Factual
16 Basis with your client?

17 MR. JENKINS: We have, Your Honor.

18 THE COURT: And in your opinion, he fully
19 understands them?

20 MR. JENKINS: He does, Your Honor.

21 THE COURT: And you join and agree in his
22 decision to enter this guilty plea here today?

23 MR. JENKINS: Yes, Your Honor.

24 THE COURT: Then at this time I'm going to have
25 entered into the record the Consent, Plea Agreement,

1 Addendum thereto, as well as the Factual Basis.

2 And returning to the First Superseding
3 Indictment, I'm going to ask you at this time,
4 Mr. Daniel Mendoza, you're named in Count One for a
5 violation of 21 U.S.C., Section 846, Conspiracy to
6 Possess with the Intent to Manufacture and Distribute
7 Methamphetamine; as well as in Count Three for a
8 violation of 18 U.S.C., Section 924(c), Possession of a
9 Firearm in Furtherance of a Drug Trafficking Crime.
10 How do you now plead, sir, to both Counts One and Three
11 of the First Superseding Indictment, guilty or not
12 guilty?

13 DEFENDANT MENDOZA: Guilty.

14 THE COURT: In the case of *The United States*
15 *vs. Daniel Mendoza*, Cause No. 4:18-CR-188, this Court
16 will recommend, sir, to the District Court that your
17 plea be accepted. And Mr. Mendoza, I'm going to
18 further find at this time that you're competent to
19 enter a plea, that you have had the assistance of
20 counsel, that you've been advised and you understand
21 your trial rights, that you've been advised and that
22 you understand the charges you've entered a plea to, as
23 well as the full range of penalties and consequences
24 associated with each of those counts.

25 I do further find that you've been advised

1 and that you understand that the Sentencing Guidelines,
2 they're not mandatory, they're merely discretionary.
3 And based upon our communications here today, I am
4 going to find that your plea was knowingly and
5 voluntarily given and that there's a Factual Basis to
6 support the plea.

7 So I'm going to prepare a Report and
8 Recommendation reflecting each of those findings. I
9 will ask at this time if the Government and defense
10 counsel waive the objections period?

11 MR. GONZALEZ: Yes, Your Honor.

12 MR. JENKINS: Yes, Your Honor.

13 THE COURT: So I'll get that prepared today
14 and get it over to the District Court, Mr. Mendoza.

15 DEFENDANT MENDOZA: Yes, ma'am.

16 THE COURT: What happens from here is your
17 Written Presentence Report gets prepared. Once it's
18 ready, a copy of it is going to go to Mr. Jenkins.
19 The two of y'all can sit down, you can go over it, you
20 can make any objections the two of you deem necessary.
21 And then following that period of time, you'll appear
22 before the District Court for sentencing.

23 Do you understand, sir?

24 DEFENDANT MENDOZA: Yes, ma'am.

25 THE COURT: Is there anything further from the

1 Government on this plea?

2 MR. GONZALEZ: No, Your Honor. Thank you.

3 THE COURT: Anything further, Mr. Jenkins?

4 MR. JENKINS: Nothing, Your Honor.

5 THE COURT: All right. Then at this time,
6 Mr. Mendoza, I'm going to have you remanded into the
7 custody of the United States Marshals. Thank you very
8 much, sir.

9 And court will be adjourned.

10 MR. JENKINS: Thank you, Your Honor.

11 THE COURT: Thank you.

12 ***[10:31 a.m. - Proceedings adjourned]***

13

14 C E R T I F I C A T I O N

15

16 I certify that the foregoing is a correct
17 transcript of the electronic sound recording of the
18 proceedings in the above-entitled matter.

19

20

21 /s/ Gwen Reed

22 3-22-20

23

24

25